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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 ISRAEL GARCIA; JESSENIA M.) No. 09-CV-0295-PHX-GMS
10 GARCIA; IVAN A. MADRUENO;) ORDER
11 PRICILLA ANN SALADORES;)
12 KATHLEEN L. CONIAM,)

13 Plaintiffs,)

14 vs.)

15 GMAC MORTGAGE, LLC fka GMAC))
16 MORTGAGE CORPORATION;))
17 EXECUTIVE TRUSTEE SERVICES,))
18 LLC; WELLS FARGO BANK, N.A.;))
19 RONALD M. HORWITZ;))
20 RESIDENTIAL FUNDING;))
21 CORPORATION fka RESIDENTIAL))
22 FUNDING CORPORATION; QUALITY))
23 LOAN SERVICE CORPORATION;))
24 GMAC MORTGAGE, LLC,))
25 Defendants.)

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27 Pending before the Court are the Motions to Dismiss of Defendant Wells Fargo Bank
28 (Dkt. # 6), Defendant Quality Loan Service Corporation (Dkt. # 13), and Defendant Ronald
M. Horwitz (Dkt. # 1-2). Defendants GMAC Mortgage, Residential Funding Company, and
Executive Trustee Services joined the motion to dismiss of Defendant Wells Fargo Bank.
(Dkt. # 9.)

29 Before “decid[ing] whether the allegations [in the Complaint] state a cause of action
30 on which the court can grant relief [or] determin[ing] issues of fact arising in the

1 controversy,” the Court must assume subject matter jurisdiction. *Bell v. Hood*, 327 U.S. 678,
 2 682 (1946). Federal courts are courts of limited jurisdiction and federal subject matter
 3 jurisdiction must exist at the time an action is commenced. *See Morongo Band of Mission*
 4 *Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). Because of
 5 its import, lack of subject matter jurisdiction may be raised at any time by any party or by the
 6 court. *See Fed. R. Civ. P. 12(h); Attorneys Trust v. Videotape Computer Prods., Inc.*, 93 F.3d
 7 593, 594-95 (9th Cir. 1996). “If the court determines at any time that it lacks subject-matter
 8 jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

9 In removing the action to this Court, Defendants assert that jurisdiction exists pursuant
 10 to 28 U.S.C. § 1331. (Dkt. # 1 ¶ 4.) Under count one of the Complaint, entitled “Temporary
 11 Injunction,” Plaintiffs summarily conclude that “Defendants . . . have . . . failed to give
 12 proper notice of Notice of Default and Right to Cure and acceleration of the loan transaction
 13 as required by 12 U.S.C. § 2601 et seq. and 15 U.S.C. 1601 et seq.” (Dkt. # 1-2 ¶ 8.) Based
 14 on this single statement, Defendants contend that the action “involves claims arising under:
 15 (1) Real Estate Settlement Procedure [A]ct [(“RESPA”)], 12 U.S.C. § 2601 et seq., and (2)
 16 Truth-in-Lending Act [(“TILA”)], 15 U.S.C. § 1601 et seq.” (*Id.*)

17 Unless a complaint presents a plausible assertion of a substantial federal right,
 18 however, a federal court does not have jurisdiction. *See Bell*, 327 U.S. at 682-83 (“[A] suit
 19 may sometimes be dismissed for want of jurisdiction where the alleged claim under the
 20 Constitution or federal statutes . . . is wholly insubstantial and frivolous.”); *Hagans v. Levine*,
 21 415 U.S. 528, 536-37 (1974) (“Over the years this Court has repeatedly held that the federal
 22 courts are without power to entertain claims otherwise within their jurisdiction if they are so
 23 attenuated and unsubstantial as to be absolutely devoid of merit . . . or no longer open to
 24 discussion.”).

25 Initially, it is unclear whether Plaintiffs intend to assert federal claims against
 26 Defendants based on the single statement referring to TILA and RESPA in the temporary
 27 injunction section of the Complaint. In the event that Plaintiffs do intend to assert claims
 28 pursuant to TILA and RESPA, they have failed to plead those claims sufficiently under

1 Federal Rule of Civil Procedure 8 to allow the Court to determine whether it may assume
 2 subject matter jurisdiction over the matter.

3 Under Federal Rule of Civil Procedure 8(a)(2), a plaintiff is required to set forth a
 4 “short and plain statement” of the claim showing that the plaintiff is entitled to relief and
 5 *giving the defendant fair notice of what the claim is and the ground upon which it rests. See*
 6 *Fed. R. Civ. P. 8(a)(2); Conley v. Gibson*, 355 U.S. 41, 47 (1957); *Porter*, 319 F.3d at 494;
 7 *see also Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007) (holding that a complaint
 8 must contain more than a “formulaic recitation of the elements of a cause of action”; it must
 9 contain factual allegations sufficient to “raise the right of relief above the speculative
 10 level.”). Additionally, under Rule 8(d), “each allegation must be simple, concise and direct.”
 11 *See also* Fed. R. Civ. P. 10(b) (requiring “[a] party [to] state its claims . . . in numbered
 12 paragraphs, each limited as far as practicable to a single set of circumstances”).

13 After review of the Complaint, the Court finds that the TILA and RESPA allegations
 14 fall short of satisfying the requirements of Rule 8. The Complaint does not put defendants
 15 fairly on notice of the claims against them. While Plaintiffs allege statutory violations under
 16 TILA and RESPA, Plaintiffs fail to set forth: (1) the specific sections of those statutes that
 17 were violated, (2) which defendants violated those rights; and (3) the factual allegations
 18 sufficient to support those violations at the pleading stage. Additionally, although Plaintiffs
 19 appear to assert that all Defendants, including the trustee defendants, failed to give proper
 20 disclosures at the time the loan was effectuated, it appears that not all defendants are or could
 21 have been responsible for conduct that would support claims under TILA and RESPA.

22 Under Federal Rule of Civil Procedure 12(e), if “a complaint is ‘so vague or
 23 ambiguous that a party cannot reasonably be required to frame a responsive pleading,’ the
 24 defendant may move for an order requiring a more definite statement by pointing out ‘the
 25 defects complained of and the details desired.’” *Bautista v. County of L.A.*, 216 F.3d 837,
 26 843 n.1 (9th Cir. 2000). “The district court may also order a more definite statement on its
 27 own initiative.” *Id.* (citing *Cesnik v. Edgewood Baptist Church*, 88 F.3d 902, 907 n.13 (11th
 28 Cir. 1996)). Therefore,

1 **IT IS HEREBY ORDERED** that, no later than **April 10, 2009**, Plaintiffs shall file
2 and serve: (1) a first amended complaint in compliance with this Order; or (2) a statement
3 that Plaintiffs abandon their claims under TILA and RESPA.

4 Should Plaintiffs elect to provide a more definite statement of their federal TILA and
5 RESPA claims, Plaintiffs MUST:

6 (1) present all factual and legal allegations in short, plain statements with each claim
7 for relief identified in separate numbered paragraphs and sections, each limited as far
8 as practicable to a single set of circumstances; and

9 (2) specifically allege each legal right Plaintiffs believe was violated, the specific
10 defendant(s) who violated the right, a sufficient factual context under *Twombly* to
11 give the defendant(s) notice of what conduct or omission gives rise to the violation
12 (including how the defendant's conduct or omission is connected to the violation of
13 Plaintiff's rights), and the specific injury Plaintiffs suffered because of that
14 defendant's conduct or omission.

15 DATED this 31st day of March, 2009.

H. Murray Snow

G. Murray Snow
United States District Judge